SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

BRIEF ON BEHALF OF THE STATE OF NEW YORK IN RESPONSE TO MOTION TO FILE COMPLAINT

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Statement

This brief is in response to the Motion by the Commonwealth of Pennsylvania for Leave to File a Complaint against the States of New York, Florida, Oregon and Virginia and the Western Union Telegraph Company, a New York corporation.

The purpose of this brief is to indicate to this Court that this is a proper case for the exercise of original jurisdiction by this Court and to that extent the State of New York supports the motion of the Commonwealth of Pennsylvania.

Jurisdiction

The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and United States Code, Title 28, Section 1251(a)(1) and (b)(3).

Questions Presented

1. Should this Court exercise original jurisdiction in a controversy between the several states respecting their rights to unclaimed and abandoned property arising from money orders?

2. Does *Texas* v. *New Jersey*, 379 U. S. 674 (1965) determine that, in the situation here presented, where the last known address of the creditor is unknown or unobtainable from the records of the debtor corporation, the state of domicile of the corporation is entitled to this abandoned property?

3. Should any other rule be adopted, with relation to unclaimed and abandoned money orders, so as to permit any other state, such as the state of origin or the state of destination of the money orders, to take this abandoned property?

Statement of the Case

The complaint of the Commonwealth of Pennsylvania seeks a determination that under its statutes relating to escheat and custody of intangibles, it is entitled to the unclaimed and abandoned property arising out of money orders purchased in Pennsylvania.

New York claims that as to money orders purchased anywhere, subsequent to January 1, 1930 and prior to

January 1, 1958 this abandoned property should be paid to the State of New York as the state of corporate domicile, the state of the central focus of management of Western Union and the location of the corporate comptroller or treasurer to whom surplus funds of the offices throughout the country are ultimately remitted. As to any money orders purchased on or after January 1, 1958, New York claims to be entitled to such abandoned property if the last known address of the purchaser of the money order, as shown by the records of Western Union, is within the State of New York and New York makes a similar claim with reference to January 1, 1958 or subsequent money orders if the last known address of the purchaser cannot be obtained from the records of Western Union.

The pertinent section of the New York Abandoned Property Law (§ 1309) was amended in 1969 as a result of several years of discussions among various states as to the possibility of disposing of these claims without legal action.[1] The separation point of January 1, 1958, which is set out in the amendment, stems from the use of a convenient date closest to the determination in *Texas* v. *New* Jersey, 379 U. S. 674 (1965) after giving effect to a seven year dormancy period contained in the statutes of several of the states, including New York and Pennsylvania.

The Pennsylvania complaint also alleges that the states of Florida, Oregon and Virginia claim to be entitled to abandoned money order property if the sendee of the money orders were residents of those states or had last known addresses in those states. There are additional variations of these claims based upon whether or not a money order draft was issued.

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[1] See appendix for New York Abandoned Property Law, § 1309, as it existed prior to amendment, effective May 26, 1969, and as amended effective that date.

Summary of Argument

Since it appears that, despite every effort by New York, the controversy cannot be resolved, this is an appropriate case for the exercise of original jurisdiction by this Court. The motion of the Commonwealth of Pennsylvania, insofar as it relates to its application for leave to file its complaint, should be granted.

Argument

We do not deem it appropriate, at this stage, to argue the relative merits of the claims of New York as against the claims of Pennsylvania or any other state. Nor do we feel it appropriate, at this time, to contravene any of the allegations of the complaint or statements of fact made in the Pennsylvania brief in support of its motion. Since this is the function of a pleading, we are proceeding upon the assumption that adequate time will be allowed for the submission of an answer by New York, if and when the Court grants this application.

This is a controversy between several states, which years of negotiation have failed to solve. For this reason we support the motion of Pennsylvania insofar as it requests this Court to exercise its original jurisdiction in this matter. In view of the complex factual and legal questions involved, we also join in the request of Pennsylvania, in its complaint, that at the proper stage in these proceedings this matter be referred to a Special Master or Federal District Court to take evidence and make appropriate reports.

A different aspect of this matter was before this Court in *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U. S. 71 (1961). There this Court referred to the multi-state claims that had been made to escheat the same abandoned

property held by Western Union. It pointed to the provisions of Article III § 2 of the Constitution which give this Court original jurisdiction of cases involving controversies between states and said (p. 77), "The situation here is in all material respects like that which caused us to take jurisdiction in *Texas* v. *Florida*, 306 U. S. 398". Later in its opinion this Court also said (p. 80):

> "Nor need we, at this time, attempt to decide the difficult legal questions presented when many different States claim power to escheat intangibles involved in transactions taking place in part in many states. It will be time enough to consider those complicated problems when all interested States—along with all other claimants—can be afforded a full hearing and a final, authoritative determination."

In *Texas* v. *New Jersey*, 379 U. S. 674 (1965), this Court, in pursuance of its holding in the *Western Union* case, *supra*, took original jurisdiction over a controversy resulting from multi-state claims to escheat the same property. The Court adopted the following rules respecting the rights of states to abandoned property (pp. 681-682 and 380 U. S. 518 [final decree]): (1) The property is subject to escheat or custodial taking by the State of last known address of the person entitled thereto, as shown on the books and records of the debtor, to the extent of that State's power under its own law to escheat or take custodially; (2) Where there is no address of the person entitled thereto on the books and records of the debtor, the property is subject to escheat or custodial taking by the state of incorporation of the debtor, subject to the right of any other state to recover such property upon proof that the last known address of the creditor was within that other State's borders and; (3) Where the state of last known address as shown on the books and records of the debtor does not have laws providing for escheat of such property, the state of corporate domicile takes, subject to

the right of the state of last known address to recover the property if and when it enacts provisions for escheat or custodial taking.

Assuming that the rationale of *Texas* v. *New Jersey, supra,* applies to a situation involving repeated multi-state and multi-phased operations and contacts, the difficulty of ascertaining the identity of the creditor becomes a paramount problem. It is entirely consistent for New York to argue, as we do, that in these circumstances the second rule should be applied, since there appears to be no reasonably certain way of determining from the books and records of Western Union who the creditor is, much less the state of his last known address. Under these conditions, this abandoned property should be paid to New York as the state of corporate domicile and as the focus of its management. But New York, as a result of continuing discussions over the years with a number of other states, decided to adopt a rule of custodial taking which would reconcile the second rule adopted by this Court with our view that if the *Texas* v. *New Jersey* rationale applied, it should not have retroactive application. It would also deal with the practically insoluble problem of determining the identity of the creditor and his last known address. In participating in the discussions with the other states, New York was particularly aware of the rationale and purpose of this Court, as stated in *Texas* v. *New Jersey, supra,* at page 679:

> "The uncertainty of any test which would require us in effect either to decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever-developing new categories of facts, might in the end create so much uncertainty and threaten so much expensive litigation that the States might find that they would lose more in litigation expenses than they might gain in escheats."

It was for these reasons that New York amended the Abandoned Property Law § 1309 in 1969. By that amendment, as to money orders purchased prior to January 1, 1958, New York, the state of corporate domicile would be entitled to take custodially. As to money orders purchased thereafter, if New York is the state of last known address of the purchaser as shown on the debtor's books and records, it would take custodially and New York would also take such abandoned property custodially if the last known address of the purchaser could not be obtained from the records of the debtor corporation.

The emphasis on the term "custodially" is deliberate. The public policy of the State of New York, as expressed in Abandoned Property Law § 102, is to utilize abandoned property for the benefit of the people of the State, "while protecting the interest of the owners thereof". Section 1309(5), in like manner, provides that the rights of a holder of a money order, "shall be in no wise affected, impaired or enlarged" by reason of the payment to the state comptroller of abandoned property.

We note that in the complaint of the Commonwealth of Pennsylvania it is requested that a temporary injunction be issued, restraining New York from proceeding with any action now pending, or from instituting any action to escheat or take custody of the property involved in this proceeding, pending further orders of this Court. There is no need for such request. Over the long period of negotiations between the states, New York did not and does not intend to institute any such action until disposition of the conroversy.

As noted above, we have not otherwise commented on the rule suggested by Pennsylvania or the rule which may be espoused by the other states, encompassed within the third question presented, concerning the right of the state of last known address of the purchaser of the money order

or of the sendee to take this abandoned property. It is our view that the time and place for such argument is after development of the complex facts upon trial of the issues raised by all the pleadings.

CONCLUSION

Accordingly, we support the motion of Pennsylvania insofar as it asks for leave to file its complaint. We respectfully request that an order be entered to that effect which also grants the State of New York an appropriate period of time to file its answer.

Dated: New York, New York, April 30, 1970.

Respectfully submitted,

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APPENDIX

McKinney's Consolidated Laws
of New York
Annotated
Book 21/2

Abandoned Property Law

Sec. 1309

As it existed prior to Amendment
by Law 1969, c. 1114
effective May 26, 1969

§ 1309. Uncashed travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check or money order on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing (a) for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale, or (b) for payment of a money order which shall have been outstanding for more than seven years from the date of its sale.

2. On or before the first day of May in each year commencing with the year nineteen hundred forty-nine every such organization holding or owing such abandoned property shall make a verified written report to the state comptroller of all such abandoned property held or owing by it as of the thirty-first day of December next preceding. Such report shall set forth the amount and identifying number of each travelers check and money order for the payment of which such abandoned property is held or owing.

3. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all abandoned property specified in its report of that year, excepting such abandoned property as shall have ceased to be abandoned since the date as of which such report was prepared. Such payment to the state comptroller shall be accompanied by a statement setting forth such information as the state comptroller may require relative to such abandoned property as shall have ceased to be abandoned.

4. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amount so paid, and after audit the state comptroller shall pay the same.

ABANDONED PROPERTY LAW

Sec. 1309

As Amended by Laws of 1969, c. 1114
effective May 26, 1969

§ 1309. Uncashed Travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a trav-

elers check on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

2. Any amount held or owing by any such organization for the payment of a money order, or for the payment of any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred thirty and prior to January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years.

3. Any amount held or owing by any such organization for the payment of such money order, or any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years, and either

(a) the last known address of the purchaser of such money order according to the records of such organization is located within this state and no instrument has been drawn or issued to effect the payment thereof, or

(b) such address is located within this state and an instrument has been drawn or issued to effect such payment, or

(c) such address cannot be obtained from the records of such organization and an instrument to effect such payment has been drawn or issued in this state, or

(d) such address cannot be obtained from the records of such organization and no instrument to effect such payment has been drawn or issued.

4. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all property deemed abandoned pursuant to this section. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require.

5. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amounts so paid, and after audit the state comptroller shall pay the same.